

## MEMORANDUM

SUBJECT: Guidance on Coordinating Title IV/Title V Permitting Schedules

FROM: Brian J. McLean, Director  
Acid Rain Division

TO: Air, Pesticides, and Toxics Division Directors  
Regions I, IV, and VI

Air and Waste Management Division Director  
Region II

Air and Toxics Division Directors  
Regions III, VII, VIII, IX, and X

Air and Radiation Division Director  
Region V

In the May 21, 1993 memorandum from Lydia Wegman and Paul Stolpman to you about State acid rain programs, we promised to provide guidance on the coordination of Title IV and Title V permitting schedules. Since then, we've had extensive discussions with OAQPS and OGC on these issues, and this memorandum reflects the options agreed upon by all HQ offices at this time. Several Regions have also asked for guidance on whether EPA-issued Phase I acid rain permits, which have permit terms from January 1, 1995 through December 31, 1999, must be referenced in State-issued Title V permits. This memorandum addresses both issues.<sup>1</sup>

If there are any questions regarding this memorandum, please contact Donna Deneen at (202) 233-9089 or Robert Miller at (202) 233-9077.

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<sup>1</sup> The policies set out in this memorandum are intended solely as guidance, do not represent final EPA action, and cannot be relied upon to create any rights enforceable by any party.

### Referencing Phase I Permits

States are not required to reference a Phase I permit in a Title V permit. The question arose from a provision in section 504(a) of the Clean Air Act that requires a Title V permit to include conditions that are necessary to assure compliance with applicable requirements of the Act. A Phase I permit, however, is EPA-issued and its requirements are only enforceable by EPA and citizens under the Act. Title IV, which takes precedence wherever its requirements differ from those of Title V (section 408(a)), provides that Phase I permits are issued by EPA, and Phase II permits are issued by States upon approval of a Title V program. The applicable requirements related to acid rain are incorporated into the EPA-issued Phase I permit in accordance with the requirements of Title IV and need only be included in the State-issued Phase II permit if Title IV provides for State permit issuance. Under 40 CFR 70.4(h) and 72.71(c)(2), EPA retains jurisdiction over Phase I permits unless it makes different arrangements with a State. At this time, we do not anticipate transferring the administration of Phase I permits to any State.

If a State permit does reference the Phase I permit, it should be made clear that the reference is for informational purposes only and that EPA has sole authority for enforcing the Phase I permit.

### Coordinating Title IV-Title V Permitting Schedules

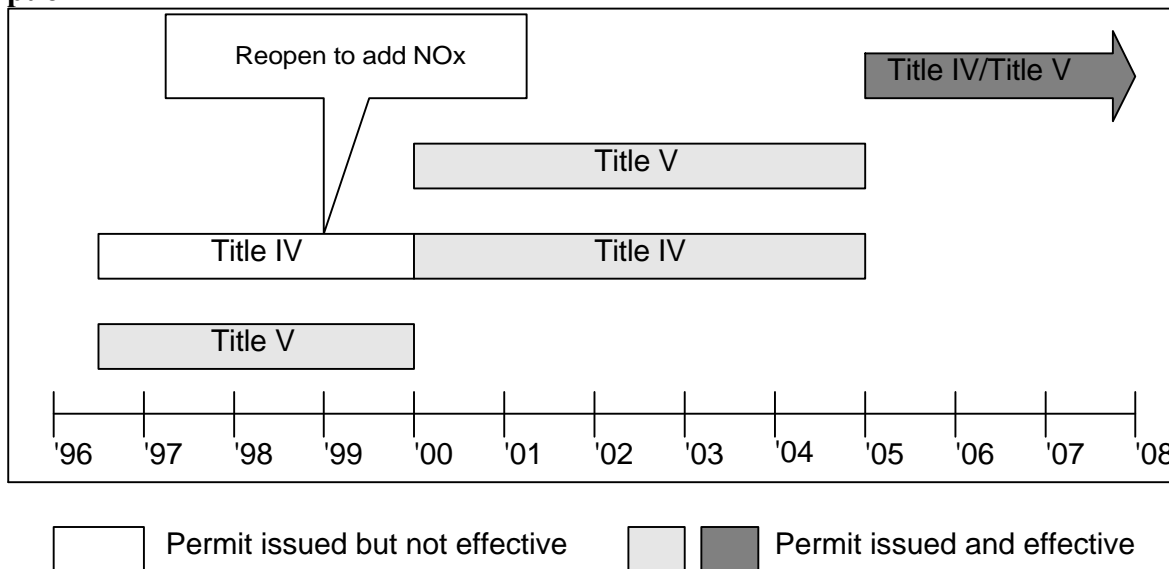
Several States have asked how to schedule the issuance of Title V permits to acid rain sources given the statutory constraints in Title IV and Title V regarding permit terms, effective dates, and issuance dates. We suggest that States use one of the three options described in this memorandum. For the purpose of this memorandum, "Phase II acid rain permit" means the portion of a Title V permit relating to acid rain, "Title V permit" means the portion of a Title V permit not relating to acid rain, "combined Title V permit" means a permit that encompasses both the acid rain and Title V permits, and "State" means any State, County, City, or District permitting authority. States may use an option not presented here, but the following five conditions must be met:

1. Phase II acid rain permits must have five year terms beginning on the effective dates. (See 40 CFR 72.69(b)(1) and 72.73(b)(1)(ii))
2. Initial Phase II acid rain permits for existing units must take effect by January 1, 2000. (See 40 CFR 72.73(b)(1)(i))
3. Initial Phase II acid rain permits for new units must take effect by the later of January 1, 2000, or, where the permit governs a unit under 40 CFR 72.6(a)(3), the deadline for monitor certification under Part 75. (See 40 CFR 72.73(b)(ii))
4. Initial Phase II acid rain permits must be issued by December 31, 1997. (See 40 CFR 72.73(b)(1)(i))

5. Phase II acid rain permits must be reopened by January 1, 1999 to add the acid rain NO<sub>x</sub> requirements. The reopening does not affect the term of the permit. (See 40 CFR 72.73(b)(2))

The following options meet the above conditions.

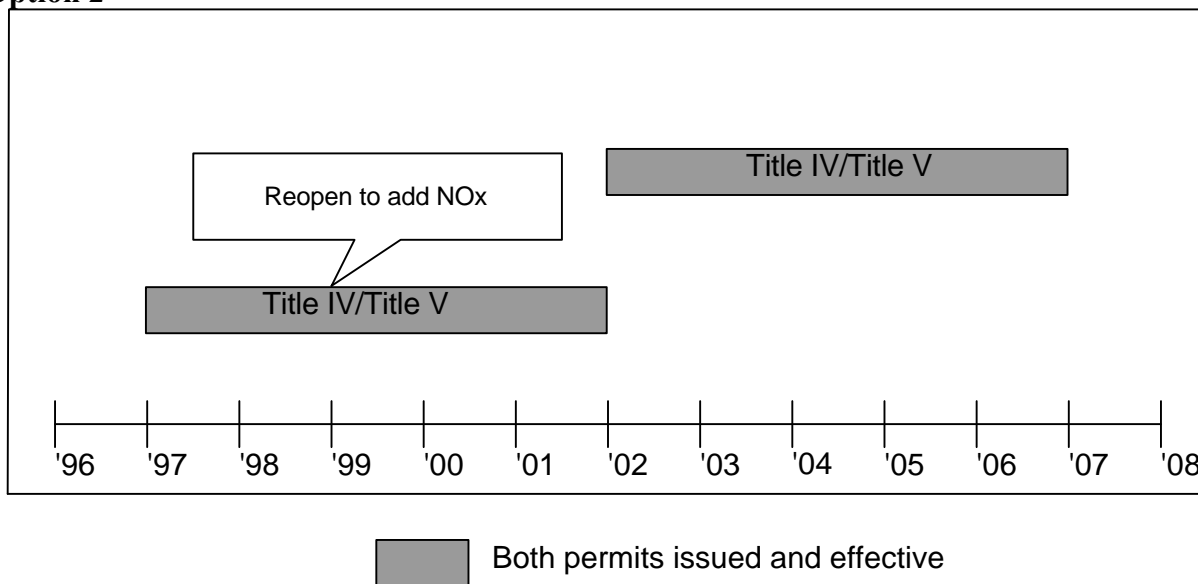
#### Option 1



In this option, the initial Phase II acid rain permit is issued simultaneously with the Title V permit, or later, as long as it is issued prior to December 31, 1997, in accordance with condition 4 above. In the example, the Title V permit is issued in mid-1996 (initial Title V permits must be issued within a 3-year time period after EPA's approval of a State's Title V operating permits program). The Title V permit is effective immediately with a three and a half year term ending on December 31, 1999; the Phase II acid rain permit has a future effective date of January 1, 2000, and a five year term ending on December 31, 2004. The Title V permit is renewed with a five year term beginning January 1, 2000, to match the effective date of the initial Phase II acid rain permit, and incorporates the Phase II permit so that all applicable requirements are consolidated into one combined Title V permit. Incorporation can be accomplished by referencing the Phase II permit in the draft and final Title V permits. This approach does not require repetition of public comment on the content of the Phase II acid rain permit because that portion of the permit is already final. All future Phase II acid rain permits and Title V permits are issued as one combined Title V permit.

This option is available to States that can issue initial Title V permits with less than a five year term and with an effective date of January 1. For this option, as with option 2 and 3 below, most Phase II acid rain permits must be reopened in 1998 or 1999 to add the Phase II NO<sub>x</sub> requirements.

## Option 2

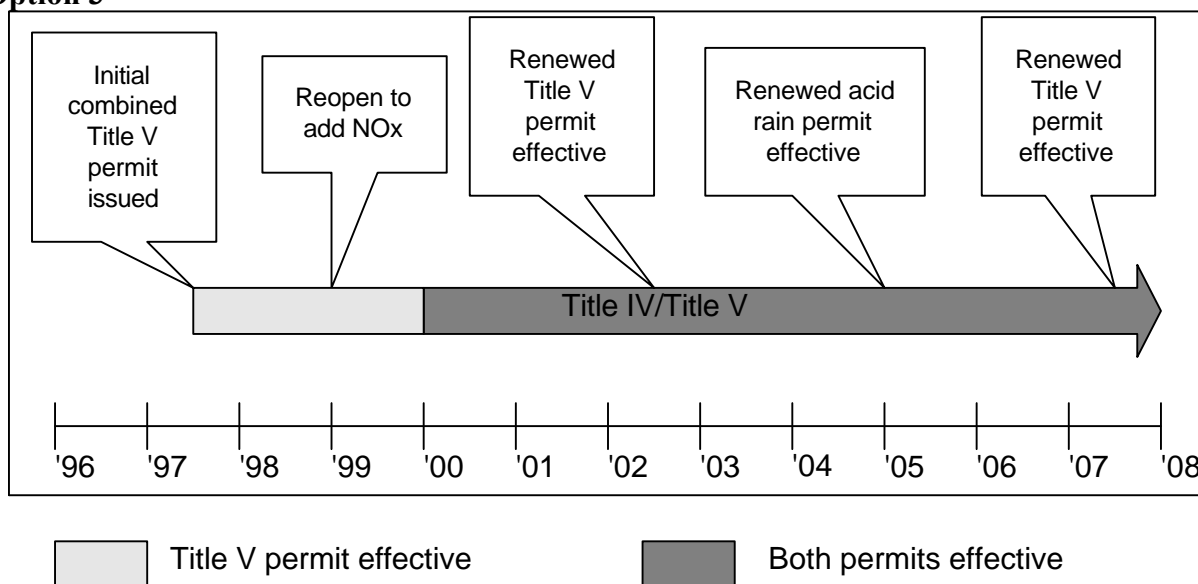


In this option, the initial Phase II acid rain permit and the initial Title V permit are issued simultaneously, and the effective date of the combined Title V permit is January 1, 1997. The effective date is January 1 (and not mid-year) because acid rain compliance plans are issued only on a calendar year basis. Although the effective date under this option occurs prior to January 1, 2000, it does not conflict with condition 2 because the permit is taking effect by January 1, 2000. Before 2000, sources are subject to only those requirements, such as the continuous emissions monitoring requirements, that are effective prior to January 1, 2000. The requirement to hold allowances in Phase II does not apply until 2000. The Phase II NO<sub>x</sub> requirements are added in 1998 or 1999 by reopening the permit.

For Phase I sources and sources that are ultimately affected under Phase II, States can use this option if the source's draft and final permit clarify that the EPA-issued Phase I acid rain permit applies before January 1, 2000, and the State-issued Phase II permit applies on and after January 1, 2000. It is necessary to clarify that, although the term of a permit issued by the State overlaps the term of the Phase I permit previously issued by EPA, the Phase I permit is not superseded by the Phase II permit.

This option provides for issuance of combined Title V permits earlier than option 1. The overlap of Phase I and Phase II acid rain permits occurs only once, when the initial Phase II acid rain permits are issued. This option is available to States that can issue initial Title V permits with an effective date of January 1.

### Option 3



In this option, the initial Phase II acid rain permit is issued simultaneously with the initial Title V permit in a combined Title V permit. The Title V permit has a five year term effective immediately; the Phase II acid rain permit has a five year term effective January 1, 2000. Subsequent Title V and Phase II acid rain permits are renewed on different schedules. In the example, a Title V permit is issued in June 1997 with a permit term ending in June 2002. The Phase II acid rain permit is also issued in June 1997, but with a permit term lasting from January 1, 2000 until December 31, 2004.

This option requires the combined Title V permit to undergo the renewal process twice every five years. Only the portion of the permit undergoing renewal, however, is subject to public comment because the remaining portion of the combined Title V permit is already final. This option, unlike the other options, does not require the Title V permit to have an effective date of January 1 and may offer the most flexibility.